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FEB 15 2007

REMARKS

Applicant has amended claims 1-3. Applicant respectfully submits that these amendments to the claims are supported by the application as originally filed and do not contain any new matter (see pages 4 and 5 of Applicant's application). Accordingly, the Office Action will be discussed in terms of the claims as amended.

The Examiner has rejected claims 1-3 under 35 USC 112, second paragraph, as being indefinite. Applicant respectfully submits that in view of the amendments to the claims, claims 1-3 are not now indefinite and comply with 35 USC 112, second paragraph.

The Examiner has rejected claims 1-3 under 35 USC 103 as being obvious over Quemin, stating that Quemin discloses a makeup composition comprising 0.5-25 wt % pigment such as zirconium oxide, 0.5-40 wt % of oil phase such as liquid paraffin and 0.01-5 wt % of an nonionic thickness such as vinyl acetate copolymer and these percentages provide for a ratio that overlaps with the presently claimed ratio of 1:4:1.

In reply thereto, Applicant would like to point out that the proportions of Applicant's invention are in parts by weight. In other words, there is one part by weight of zirconium oxide, four parts by weight of liquid paraffin and one part by weight of polyvinyl acetate resin. Applicant directs the Examiner's attention to page 5, first full paragraph, wherein it exemplifies this ratio by stating that 1 kg of liquid zirconium oxide is mixed with 4 kg of liquid paraffin and then 1 kg of liquid polyvinyl acetate resin is added thereto and all of it is mixed together. If one were to convert these parts by weight into percentages, it would be 16 % of emulsion of zirconium oxide, approximately 64 % of liquid paraffin and approximately 16 % of emulsion of polyvinyl acetate resin. Clearly, the makeup composition of Quemin does not fall within these percentages. In addition, Applicant respectfully submits that the zirconium oxide in Applicant's invention is an emulsion whereas the zirconium oxide in Quemin is a pigment in the form of solid particles and these solid particles are then added to the emulsion which is the makeup composition. Still further, Applicant respectfully submits that Quemin is a makeup composition and not a water repellant for concrete, mortar, stone or wood.

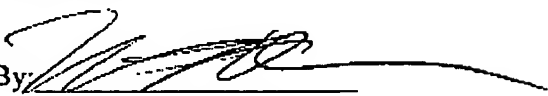
In view of the above, therefore, Applicant respectfully submits that Applicant's invention is not only not the makeup composition of Quemin but also would not be suggested to one of ordinary skill in the art. Therefore, Applicant respectfully submits that claims 1-3 are not obvious over Quemin.

In view of the above, therefore, it is respectfully requested that this Amendment be entered, favorably considered and the case passed to issue.

Please charge any additional costs incurred by or in order to implement this Amendment or required by any requests for extensions of time to KODA & ANDROLIA DEPOSIT ACCOUNT NO. 11-1445.

Respectfully submitted,

KODA & ANDROLIA

By 

William L. Androlia
Reg. No. 27,177

2029 Century Park East
Suite 1140
Los Angeles, CA 90067-2983
Tel: (310) 277-1391
Fax: (310) 277-4118

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 William L. Androlia

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